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USAC

Universal Service Administrative Company

Federal Communications Commission
Office of the Secretary*Administrator's Decision Letter**By Certified Mail*

May 15, 2014

Scott Obert-Thorn
Controller
ComSouth Telenet, Inc.
PO Box 1298
Hawkinsville, GA 31036Re: ComSouth Telenet, Inc.(Filer ID 825306)
FCC Order 13-2254 and Revised 2010 and 2011 FCC Forms 499-A submitted on
January 16, 2014

Dear Mr. Obert-Thorn:

The Universal Service Administrative Company (USAC) has completed its evaluation of ComSouth Telenet, Inc.'s (Filer ID 825306) (ComSouth) revised 2010 and 2011 FCC Forms 499-A (Revised Forms) and supporting documentation which were submitted to USAC on January 16, 2014 in response to the Federal Communications Commission's (FCC or Commission) *RICA/Blackfoot Order (Order)*.¹ As discussed in more detail below, based on USAC's review of the *Order*, as well as ComSouth's Revised Forms and supporting documentation, USAC has determined that ComSouth does not qualify for the relief provided in the *Order* and hereby rejects ComSouth's Revised Forms. As a result, no credits will be issued to ComSouth pursuant to the *Order*.

On November 25, 2013, the Commission released the *Order*, which addressed, among other things, a petition for declaratory ruling filed by the Rural Independent Competitive Alliance (RICA).² At issue in the petition was whether competitive local exchange carriers (CLECs) are required to allocate to the interstate jurisdiction a portion of their fixed local service revenue for federal Universal Service Fund (USF) contribution purposes.³ Specifically, in its petition for declaratory ruling, RICA asked the Commission to clarify that CLECs are under no binding legal obligation to report on their

¹ See generally *In the Matter of Universal Service Contribution Methodology Petition for Declaratory Ruling by the Rural Independent Competitive Alliance Request for Review of a Decision of the Universal Service Administrative Company by Blackfoot Communications, Inc.*, WC Docket No. 06-122, Declaratory Ruling and Order, DA 13-2254, 28 FCC Rcd 16037 (2013) (*RICA/Blackfoot Order*).

² See *id.* The *RICA/Blackfoot Order* also addressed a request for review filed by Blackfoot Communications, Inc. (BCI) of a decision by USAC to reclassify as interstate revenue a portion of the fixed local service revenues reported by BCI on its 2010 FCC Form 499-A. *Id.* at ¶ 1.

³ *Id.*

FCC Forms 499-A any portion of their end-user revenues that are not received by them pursuant to rates explicitly designated as charges for the provision of interstate service.⁴

The Commission agreed with RICA, clarifying that “[a]lthough CLECs must report their end-user interstate revenues on the FCC Forms 499, no Commission rule or order requires [CLECs] to identify and recover from their end-user customers a SLC or equivalent charge for the non-traffic-sensitive costs of providing interstate or interstate exchange access service.”⁵ Rather, the Commission noted that “under existing rules and requirements, CLECs are free to recover those interstate costs from their interexchange carriers in whatever manner they deem appropriate,” within the limitations of the FCC’s rules.⁶ The Commission further held that:

To the extent that CLECs choose to recover a non-traffic-sensitive charge for the costs of providing interstate or interstate exchange access service from their end-user customers rather than from access charges to interexchange carriers, they must allocate and report those revenues as interstate end-user revenues, for USF contribution reporting purposes, in a manner that is consistent with their supporting books of accounts and records, or the Commission’s good faith estimate requirement.”⁷

Accordingly, the Commission granted RICA’s request, allowing those “RICA members who filed amended FCC Forms 499 under protest, based on USAC’s directive to identify an interstate portion of fixed local exchange services, a period of 60 days within which to revise their filings and provide any relevant documentation in support of such filings.”⁸ The FCC also directed USAC to refund any resulting overpayments to these parties based on its review of those revised filings and supporting documentation consistent with the Commission’s findings.⁹ Finally, the Commission found good cause to waive the one-year filing deadline for this group of contributors “to enable USAC’s processing of any such revised filings,”¹⁰ but cautioned contributors “that the relief provided in [the *Order*] does not permit them to modify retroactively how they have recorded revenues in their general ledger for past periods.”¹¹

On January 16, 2014, ComSouth submitted the Revised Forms and supporting documents in response to the *Order*. Although ComSouth submitted the Revised Forms and supporting documents within the required 60-day period provided in the *Order* and the amended 2010 and 2011 FCC Forms 499 had been filed under protest based on USAC’s directive to identify an interstate portion of fixed local exchange services, ComSouth

⁴ *Id.*

⁵ *Id.* at ¶ 12.

⁶ *Id.*

⁷ *Id.* at ¶ 13.

⁸ *Id.* at ¶ 14.

⁹ *Id.*

¹⁰ *Id.* at ¶ 15.

¹¹ *Id.*

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failed to demonstrate that it was a RICA member during calendar years 2009, 2010, and 2011. Moreover, based on a review of a list of RICA members for calendar years 2010 through 2012 that USAC requested from RICA following the release of the *Order*, USAC was able to verify that ComSouth was indeed not a RICA member during those years. As a result, USAC determined that ComSouth does not qualify for the relief provided in the *Order*.

FCC regulations require that telecommunications carriers file an annual FCC Form 499-A. In addition, carriers are required to file quarterly FCC Forms 499-Q, unless they meet the *de minimis* exemption.¹² USAC relies on projected revenue for the upcoming quarter as reported on the FCC Form 499-Q to bill each carrier its federal Universal Service contribution obligations.¹³ USAC relies on the annual FCC Form 499-A to reconcile billings for the previous year, as projected on the FCC Forms 499-Q.¹⁴

The FCC has stated that timely filing of the FCC Form 499 is an essential administrative requirement that serves the public interest and is a requirement on which the FCC relies in order to determine the quarterly Universal Service contribution factor.¹⁵ The FCC established a 45-day revision window to give contributors an opportunity to revise their quarterly forms while adequately maintaining appropriate Universal Service funding in a given quarter. The FCC also established a twelve-month revision window to permit contributors to revise FCC Form 499-A filings.¹⁶ The FCC Form 499-A revisions are due on March 31 of the calendar year following the original April 1 deadline.¹⁷ However, an FCC Form 499-A revision is always required if the revision results in an

¹² See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."). See also 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis."); 47 C.F.R. § 54.708 (providing that "[i]f a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability.") (internal citations omitted). We note that regulations governing the Telecommunications Relay Service require all interstate telecommunications service providers to file at least an annual Telecommunications Reporting Worksheet (FCC Form 499-A). 47 C.F.R. § 64.604(c)(5)(iii)(A-B). Regulations governing local number portability and number administration require all telecommunications carriers providing service in the United States to complete an FCC Form 499-A. 47 C.F.R. §§ 52.32(b) and 52.17(b).

¹³ See generally 47 C.F.R. Part 54.

¹⁴ *Id.*

¹⁵ *In the Matter of Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, DA 05-520, 20 FCC Rcd 4224, 4225-26, ¶¶ 3, 5 (2005).

¹⁶ *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, CC Docket No. 96-45, Order, DA 04-3669, 20 FCC Rcd 1012, 1016, ¶ 10 (2004) (*Revision Deadline Order*).

¹⁷ *Id.*

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increased contribution obligation (i.e., the carrier's previously filed FCC Form 499-A resulted in the carrier having a Universal Service contribution obligation less than what the carrier owes based on information then or currently available to the carrier).¹⁸ In all cases, it is the carrier's obligation to ensure filings are made in a timely and accurate manner.

The 2010 and 2011 FCC Forms 499-A were due on April 1, 2010 and 2011, respectively. USAC records indicate that ComSouth timely filed its original 2010 and 2011 FCC Forms 499-A on March 30, 2010 and April 1, 2011, respectively. As discussed above, USAC records also indicate that ComSouth submitted Revised Forms to USAC on January 16, 2014 each of which would result in a downward revision. Because ComSouth submitted its Revised Forms well after the twelve-month revision window and because ComSouth does not qualify for the relief provided in the *Order* as previously stated, USAC hereby must reject ComSouth's Revised Forms, and no credits will be issued to ComSouth pursuant to the *Order*.

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.usac.org/cont/about/program-integrity/appeals.aspx>

Sincerely,

USAC

cc: Cheryl Collins, FCC Office Managing Director
Terry Cavanaugh, FCC Enforcement Bureau
Pamela Kane, FCC Enforcement Bureau
William Kehoe, FCC Enforcement Bureau
Vickie Robinson, FCC Wireline Competition Bureau
Chin Yoo, FCC Wireline Competition Bureau
Erica Myers, FCC Wireline Competition Bureau

¹⁸ *Id.* at ¶ 1.